

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDREW RICK LOPEZ,

No. 2:98-cv-2111-MCE-EFB P

Plaintiff,

V.

D. PETERSON, et al.,

ORDER

Defendants.

16 Plaintiff is a state prisoner proceeding though counsel in an action brought under 42
17 U.S.C. § 1983. He claims, *inter alia*, that defendant Holmes violated his right to due process by
18 wrongfully issuing a rules violation report after plaintiff refused to allow Holmes to photograph
19 his tattoos. See ECF No. 363 at 3; ECF No. 367. He moves to compel defendant Holmes to
20 produce “Any and all DOCUMENTS during the period 1997 and May 31, 1998 that identify,
21 display, or show Plaintiff as being under any type of gang investigation at HDSP.” ECF No. 417.
22 For the reasons stated below, the motion is granted.

23 Defendant Holmes objected to plaintiff's document request as overbroad, vague as to the
24 meaning of "gang investigation," lacking foundation, calling for speculation, and as a violation of
25 California Code of Regulations, Title 15 § 3321 regarding "confidential material." Defendant
26 also objected to the request as unduly burdensome, oppressive, and harassing because (1) the
27 amount of work to locate such information is substantially outweighed by any discoverable
28 admissible evidence that may be located and (2) it is beyond the scope of the claims asserted

1 against defendant Holmes. ECF No. 417 at 2. In his opposition, defendant Holmes maintains
2 that evidence of plaintiff's gang validation is not relevant to plaintiff's claims and is not likely to
3 lead to admissible evidence.¹ *Id.* at 5-8.

4 Rule 26(b)(1) provides that the scope of discovery includes “any nonprivileged matter that
5 is relevant to any party’s claim or defense.” Relevant information encompasses “any matter that
6 bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may
7 be in the case.” *Ibanez v. Miller*, No. Civ. S-06-2668-JAM-EFB P, 2009 U.S. Dist. LEXIS 98394,
8 at *5 (E.D. Cal. Oct. 22, 2009) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351
9 (1978)). Moreover, “[t]he question of relevancy should be construed ‘liberally and with common
10 sense’ and discovery should be allowed unless the information sought has no conceivable bearing
11 on the case.” *Id.* (quoting *Soto v. City of Concord*, 162 F.R.D. 603, 610 (N.D. Cal. 1995)).

12 Plaintiff's specific claim against defendant Holmes, restated numerous times throughout
13 the complaint, is that Holmes improperly issued a disciplinary report against plaintiff for his
14 refusal to be photographed. *See* ECF No. 319 ¶ 36 (complaining he had no "notice" of a rule
15 requiring inmates to remove their clothes to be photographed); ¶ 59 (complaining that Holmes
16 charged him with violating a rule that had never been published and that Holmes lacked probable
17 cause because plaintiff did not have the tattoos he was looking for); ¶ 71 (complaining that he had
18 no notice of the rule when Holmes charged him with "refusing to submit [to] photographs"); ¶ 74
19 (complaining that Holmes "issued a CDC 115 that alleged [plaintiff] committed a violation, for an
20 act for which no such rules exists [which caused plaintiff] to be denied a transfer"); ¶ 99
21 ("Defendant Holmes denied due process on June 1, 1998 by exceeding his authority and issuing
22 me a CDC 115 Log No. C-98-06-0009, for refusing to submit to photographs when absolutely no
23 published rule existed requiring that I submit to photographs as he desired"). Plaintiff contends
24 that his discovery request is proper because the photographs at issue were "clearly for purposes of

¹ Defendant also notes that plaintiff is litigating two other cases where his gang validation is at issue. ECF No. 417 at 8. Defendant contends that plaintiff is “improperly using this case to obtain discovery” in those other cases. *Id.* As discussed *infra*, plaintiff’s discovery request in this action is not improper. Whether the requested documents will assist plaintiff in other litigation activities is beside the point.

1 revealing any tattoos as part of a gang investigation” ECF No. 417 at 4. Indeed, the
2 disciplinary report at issue notes that Holmes sought to photograph plaintiff for purposes of
3 “updating his gang affiliation file.” ECF No. 402-3. Thus, documents related to any “gang
4 investigation from 1997 to May 31, 1998” are clearly not beyond the scope of plaintiff’s claims
5 and defendant’s objection on this ground is overruled.

6 Defendant’s remaining objections also lack merit. Plaintiff’s request is not overbroad, as
7 it is properly limited in scope to a specific period of time and to a specific institution. In addition,
8 the term “gang investigation” is not vague, as CDCR routinely uses tattoos as an item toward
9 identifying prisoners as associates or members of prison gangs. *See Cal. Code Regs. tit. 15,*
10 § 3378.1(b)(10). The objections as to “foundation” and as “speculation” are similarly groundless.
11 *See, e.g., Woodall v. California*, No. 1:08-cv-1948-OWW-DLB, 2010 U.S. Dist. LEXIS 119330,
12 at *4 (E.D. Cal. Oct. 22, 2010) (“Foundation goes towards the admissibility of evidence, which is
13 not a limitation in discovery.”). Finally, defendant makes absolutely no showing as to how the
14 request is unduly burdensome. To the extent that any responsive information is deemed
15 “confidential material” according to § 3321, defendant must seek an appropriate protective order.

16 Accordingly, IT IS HEREBY ORDERED that plaintiff’s motion to compel (ECF No. 417)
17 is granted and defendant Holmes is granted 30 days within which to serve his response to
18 plaintiff’s request for production number 18.

19 DATED: August 26, 2015.

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21 EDMUND F. BRENNAN
22 UNITED STATES MAGISTRATE JUDGE
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